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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/218,277	12/22/1998	MICHAL EISENBACH-SCHWARTZ	EISHENBACH=3A	3311

1444 7590 08/10/2004

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EXAMINER

TURNER, SHARON L

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/218,277

Applicant(s)

EISENBACH-SCHWARTZ ET AL.

Examiner

Sharon L. Turner

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7, 9, 11-13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 3-7, 9, 11-13 and 16-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The letter filed 1-27-04 has been entered into the record and has been fully considered.
2. Applicants request to withdraw the final rejection of 5-20-03 and issue restriction is hereby granted.
3. Claims 3-7, 9, 11-13 and 16-20 are pending.

Election/Restriction

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 3-5, 11-12, 16-17 and 20 in part to the extent drawn to T-cell administration in a method of ameliorating the effects of injury on the CNS or PNS, classified for example in class 424, subclass 93.1.
 - II. Claims 3-7, 9, 13, 16-17, 19 and 20 in part to the extent drawn to peptide administration in a method of ameliorating the effects of injury on the CNS or PNS, classified for example in class 424, subclass 184.1.
 - III. Claims 3-5, 16-18 and 20 in part to the extent drawn to nucleic acid administration in a method of ameliorating the effects of injury on the CNS or PNS, classified for example in class 514, subclass 44.
5. The inventions are distinct, each from the other because of the following reasons:
6. The inventions of Groups I-III are related as processes. The processes are distinct each from the other because they produce different effects, comprise different steps and utilize different reagents, i.e., administration of T-cells, peptides or nucleic acids.

7. Inventions I-III are related as combinations and subcombinations. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because any combination of a-e; (T-cells, various antigen peptides or nucleic acids) may be used together or separately. The subcombination has separate utility such as use alone. Also T-cells may be used for effecting an immune response; antigens may be used for stimulating antibody production and nucleic acids may be used in hybridization procedures.
8. Because these inventions are distinct for the reasons given above and the search required for any of the Groups is not required for any other Group, restriction for examination purposes as indicated is proper.
9. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.
10. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
11. This application contains claims directed to an indeterminate number of inventions comprising the following patentably distinct species of the claimed invention:

Species of peptide or NS-antigens selected from the group consisting of; a) myelin basic protein, b) myelin oligodendrocyte glycoprotein, c) proteolipid protein, d) myelin-associated glycoprotein, e) S100, f) β -amyloid, g) Thy-1, h) P0, i) P2, j), SEQ ID NO:12, k) SEQ ID NO:13, and l) SEQ ID NO:14.

Species of nucleotide selected from the group consisting of; a) SEQ ID NO:1, b) SEQ ID NO:2, c) SEQ ID NO:3, d) SEQ ID NO:4, e) SEQ ID NO:5, f) SEQ ID NO:6, g) SEQ ID NO:7, h) SEQ ID NO:8, i) SEQ ID NO:9, j) SEQ ID NO:10 and k) SEQ ID NO:11.

Species of injuries or diseases selected from the group consisting of; a) blunt trauma, b) penetrating trauma, c) hemorrhagic stroke, d) ischemic stroke, e) damage caused by surgery, f) diabetic neuropathy, g) senile dementia, h) Alzheimer's disease, i) Parkinson's disease, j) facial nerve (Bell's) palsy, k) glaucoma, l) Huntington's chorea, m) amyotrophic lateral sclerosis, n) non-arteritic optic neuropathy and o) vitamin deficiency, p) other than an autoimmune disease, q) other than a neoplasm.

12. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for each of the delineated 3 species sets as set forth above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 16-17 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected for each of species groups 1-3 consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are

generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP, 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

14. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with

the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Turner, Ph.D. whose telephone number is (571) 272-0894. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached at (571) 272-0961.



Sharon L. Turner, Ph.D.
August 5, 2004

SHARON L. TURNER, PH.D.
PATENT EXAMINER